IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1632 OF 2003
IN
EXECUTION APPLICATION NO. 213 OF 2001
IN
SUMMARY SUIT NO. 4118 OF 1998

Padmanabh B. Shetty .. Plaintiff
v/s.
Suresh R. Shetty .. Defendant

G.S. Godbole for the petitioner/plaintiff.
V.B. Singh for the respondents/defendants.

CORAM: S.U. KAMDAR, J.

DATE : 10TH JANUARY, 2005.

P.C :

1. The present Chamber Summons has been taken out by the defendant Judgment Debtor for setting aside the proclamation of sale issued by the Sheriff of Bombay on the application of plaintiff for execution of the decree.

2. Some of the material facts are as under: On 21.9.1999 a consent decree was passed in favour of the plaintiff and against the defendant for sum of Rs.6,00,000/- with interest thereon. It is an admitted position before me that out of the decreetal amount only sum of Rs,35,00,000/- is paid and the balance decree is still not satisfied and is outstanding. In execution of the said decree an application was made being application no. 213 of 2001 and the properties were attached such as Sairaj Bar and Restaurant together with the tenancy rights of the business premises situated at Pandav niwas, Ground Floor, J.N. Road, Mulund, Mumbai-400 080.

3. In the mean time on 6.3.2003 the Central Bank of India in exercise of powers under section 13(2) read with Rule 9 of the Securatisation and Reconstruction of Financial Assets and Enforcement of Security Interest (II) Ordinance 2002 issued a notice for taking over possession of the said property. The said ordinance has been since replaced by the provisions of the said Act of 2002 (hereinafter referred to as ‘the said Act’). On the very same date i.e. 6.3.2003 the Central Bank of India did not

take physical possession of the said property but took the symbolic possession and permitted the defendant herein to run the said business in the said property.

4. Subsequent thereto the said property was attached on 30.10.2003 in execution of a decree and a proclamation of sale was issued by the Office of Sheriff on 10.11.2003. It is this proclamation of sale which is be challenged by the defendant judgement debtor in the present case. The learned counsel for the defendant in support of Chamber Summons has contended that by virtue of the provisions of section 13 sub-section 4 and the Clause-a thereto the property is vested as on 6.3.2003, in the Central Bank of India and once the property is vested in the Central Bank of India, the Plaintiff has no right to attach and or sell the said immovable property in execution of the said decree. It is the case of the learned counsel for the defendant/judgement debtor that the implication of sub-section 4 of section 13 of the Act inter-alia is that the Central Bank of India took over the possession of the secured assets including the right to transfer for realising the assets which indicate that the property is

vested in the Bank by virtue of the notice issued on 6.3.2003. Alternatively the learned counsel has placed reliance on Order 21 Rule 59 has inter-alia contended that the said provisions provides that if the property to be attached is in the custody of any court or public officer then the attachment should be made after notice to such court or officer requesting that such property and or any interest or dividend becoming payable therein shall be held subject to further orders of the court. According to the learned counsel for the defendant/judgment debtor the fact that the central bank has issued notice under section 13 of the Securatisation act and has taken a symbolic possession indicates that order 21 rule 59 is applicable since the Central Bank of India is government authority and the officer of the bank public officer. The learned Counsel for the defendant has therefore contended that without complying with the said provisions, the said property cannot be attached or sold in execution of the said decree.

5. I am not impressed with the arguments advanced by the learned counsel for the defendant/judgement debtor. The provision of section 13 sub-section 4 does not provide

for vesting of any right, title and or interest in respect of the said properties in favour of the secured creditors. The power conferred under the secrutisation act is merely that of a foreclosure of a mortgage and not that of a transfer right, title and interest in the property or vesting thereof. It is settled law that such transfer can take place only by a method known to law and when the same is expressly provided by a statute. In my view such transfer can not be inferred from the provision of taking possession under the Act. Under the scheme of the Act a transfer of title is provided in favour of third parties when a mortgagee disposes off the mortgage property under sub-section 6 of Section 13 of the Act and not prior thereto. In view of the aforesaid position in law, the argument that the property cannot be attached and sold in satisfaction of the decree under the provisions of section 13(4) has no merits and requires to be rejected. It is undoubtedly true that if the property is mortgage with the bank then out of the sale proceeds first the claim of the bank as secured creditor would be required to satisfied and if only there is any balance then the same could be paid over to the decree holder in execution of the decree.

However, it does not mean that because the property is mortgaged to the bank or a notice is issued under section 13(4) of Securatisation Act, the properties can not be attached and sold in execution of a decree.

6. Turning to the second contention that the procedure as contemplated under Order 21 Rule 52 of the CPC is required to be complied with before execution of decree, I am equally not impressed with the aforesaid argument. The Central Bank of India is a corporation which is neither a public authority or officer of the Central Bank of India a public officer. I am of the view that the provisions of order 21 rule 52 only applies when the property is in the custody of the court or an officer who is public officer such as Receiver, Liquidator or any such other person holding the post of a public office. To hold that the Central bank of India or an officer appointed by the Central Bank of India under the Securatisation Act is a public Officer in my view would tantamount to expanding the scope and purpose of provisions of order 21 rule 52 of CPC. Apart from the aforesaid contention the learned counsel for the plaintiff has drawn my attention to the fact that even

though notice is issued on 6.3.2003 under the provisions of Securatisation act, the Central Bank of India has not taken actual physical possession of the said property but permitted the defendant/judgement debtor to use, occupy, possess and enjoy the same. Thus the argument advanced by the learned counsel for the defendant that there is vested right in the Central Bank of India is totally misnomer and without any merits. In the aforesaid circumstances I find no merits whatsoever in the present Chamber Summons. Chamber Summons is dismissed with costs.

SD/-

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